

Department of Health
Notice of Rulemaking Hearing
Board of Alcohol and Drug Abuse Counselors
Division of Health Related Boards

There will be a hearing before the Tennessee Board of Alcohol and Drug Abuse Counselors to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 14th day of December, 2005.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

Substance of Proposed Rules

Amendments

Rule 1200-30-1-.04, Qualifications for Licensure, is amended by deleting subparagraph (1) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (e) shall read:

- (1) (e) An applicant shall successfully complete the written examination required by Rule 1200-30-1-.08. The applicant shall also authorize the written examination provider and/or the testing agency to send his/her examination scores directly to the Board's administrative office.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

Rule 1200-30-1-.05, Licensure Process, is amended by deleting part (1) (a) 11. in its entirety and substituting instead the following language, so that as amended, the new part (1) (a) 11. shall read:

- (1) (a) 11. An applicant shall successfully complete the written examination required by Rule 1200-30-1-.08 prior to submitting an application for licensure. An applicant shall include a completed jurisprudence examination, as required by Rule 1200-30-1-.08, when his/her completed application for licensure is returned to the Board's administrative office. An applicant shall be scheduled to take the oral examination, as required by Rule 1200-30-1-.08, when the Board has determined that the applicant's application is complete and successful completion of the written and jurisprudence examinations has been verified.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

Rule 1200-30-1-.07, Application Review, Approval, Denial, Interview, is amended by deleting part (8) (a) 2. in its entirety and substituting instead the following language, so that as amended, the new part (8) (a) 2. shall read:

- (8) (a) 2. The applicant fails to pass the oral examination within twelve (12) months after being notified of eligibility.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

Rule 1200-30-1-.07, Application Review, Approval, Denial, Interview, is amended by deleting paragraph (6) in its entirety and renumbering the remaining paragraphs accordingly:

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

Rule 1200-30-1-.08, Examinations, is amended by deleting subparagraph (1) (a) in its entirety and renumbering the remaining subparagraphs accordingly, and is further amended by deleting subparagraphs (2) (a) and (2) (c) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (2) (a) and (2) (c) shall read:

- (2) (a) An oral examination is required for each applicant other than those applying by reciprocity. The applicant shall be eligible to sit for the oral examination only after the Board has determined that the applicant's application is complete and successful completion of the written and jurisprudence examinations has been verified.
- (2) (c) An oral examination is scheduled for each applicant as soon as reasonable after the Board has determined that the applicant's application is complete and successful completion of the written and jurisprudence examinations has been

verified. Notification of the test date and site of the oral examination will be provided to an applicant in writing from the Board at least thirty (30) days prior to the oral examination date.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

Rule 1200-30-1-.12, Continuing Education, is amended by deleting subparagraph (3) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (a) shall read:

- (3) (a) All providers of continuing education not authorized by paragraph (2) must request and receive approval of their program content by the Board to fulfill the continuing education requirements set forth in this rule. Providers who intend to offer more than one (1) presentation of the same course, event, or activity during one (1) calendar year may combine in a single application the information required by subparagraph (3) (b) for the multiple presentations.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605, and 68-24-606.

Rule 1200-30-1-.15, Disciplinary Actions and Civil Penalties, is amended by deleting paragraph (8) in its entirety and renumbering the present paragraph (9) as the new paragraph (8).

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

Rule 1200-30-1-.16, Board Meetings, Officers, Consultants, and Records, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (4) and (5), so that as amended, the new catchline and the new paragraphs (4) and (5) shall read:

1200-30-1-.16 Board Meetings, Consultants, Declaratory Orders, and Screening Panels.

- (4) Declaratory orders. The Board adopts, as if fully set out herein, rule 1200-10-1-.11 of the Division of Health Related Boards, as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to the rule and not by the Division. Declaratory order petition forms can be obtained from the Board's administrative office.
- (5) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-223, 4-5-224, 4-5-225, 63-1-138, 68-24-605, 68-24-606, and Public Chapter 234 of the Public Acts of 2005.

Rule 1200-30-1-.17, Advertising, is amended by deleting the language of the rule in its entirety and substituting instead the following language as new paragraphs (1) through (5):

(1) Definitions

- (a) Advertising - Includes but is not limited to paid or unpaid public statements, brochures, printed matter, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures and public oral presentations, and published materials.
- (b) Licensee - Any person holding a license to practice as a Licensed Alcohol and Drug Abuse Counselor in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
- (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.

(2) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unethical conduct, and subject the licensee to disciplinary action pursuant to Rule 1200-30-1-.15:

- (a) Claims that the services performed, personnel employed, or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
- (b) The misleading use of an unearned degree.
- (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
- (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
- (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
- (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.
- (g) Utilization of any statistical data or other information based on past

performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.

- (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
- (i) Any misrepresentation of a material fact.
- (j) The knowing suppression, omission or concealment of any materials fact or law without which the advertisement would be deceptive or misleading.
- (k) Misrepresentation of credentials, training, experience, or ability.
- (l) Failure to include the corporation, partnership or individual name, address, and telephone number of licensees in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
 - 1. Upon request provide a list of all licensees practicing at that location; and
 - 2. Maintain and conspicuously display a directory listing all licensees practicing at that location.
- (m) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
- (n) After thirty (30) days of the licensee's departure, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
- (o) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
- (p) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
- (q) Making false, deceptive, misleading or fraudulent statements regarding

fees.

(3) Advertising Records and Responsibility

- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed or certified professional employees acting as an agent of such firm or entity.
- (b) Any and all advertisements are presumed to have been approved by the licensee named therein.
- (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.
- (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.

(4) Advertising Conduct

- (a) Licensees who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.
- (b) If licensees learn of deceptive statements about their work made by others, licensees make reasonable efforts to correct such statements.
- (c) Licensees do not compensate employees of press, radio, television or other communication media in return for publicity in a news item.
- (d) A paid advertisement relating to the licensee's activities must be identified as such, unless it is already apparent from the context.

- (5) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions

thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the in applicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-24-605, 68-24-606, and Public Chapter 467 of the Public Acts of 2005.

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Contact who can answer questions concerning this notice of rulemaking hearing, technical contact for disk acquisition, and person who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 1st Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN 37247-1010 615-532-4397.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Board of Alcohol and Drug Abuse Counselors.

Robbie H. Bell, Director
Health Related Boards

Subscribed and sworn to before me this the 16th day of September, 2005.

Notary Public

My commission expires on the 25th day of March, 2006.

The notice of rulemaking set out herein was properly filed in the Department of State on the ____ day of _____, 2005.

Riley C. Darnell
Secretary of State

By: _____